IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3722 OF 1991

Kisan Sakharam Dabade & Ors. ..Petitioners

versus

Mugutrao Sakharam Dabade, since deceased by his legal heirs and legal representatives
Hanumant M. Dabade & Ors. ..Respondents

Mr. G. B. Karandikar for the Petitioners.
Ms. R. Ambekar for the Respondent No.1.

CORAM : D. G. DESHPANDE, J.

DATE : 9TH OCTOBER, 2006

ORAL ORDER :

1. Heard learned Counsel for the petitioners and the respondents.

2. The original tenant was Mugutrao Sakharam Dabade. He died leaving behind two sons the petitioner and the respondent No.1. The landlord of the land was one Laxman Shridhar Inamdar. On 5.7.1983 the landlord obtained possession of the land under Section 33B of The Bombay Tenancy and Agricultural Lands Act, (hereinafter referred to as

the "Tenancy Act"). Thereafter landlord sold the land to one of the legal heirs of original tenant Sakharam. Revenue Authorities considered it as a breach of provisions of Section 33B because it was sold within 12 years. The sale deed was declared invalid. The result would be to deprive the respondent of the land purchased by him from the landlord.

3. Counsel for the petitioners and the respondents submits that even otherwise both the petitioner and the respondent No.1 would be entitled to the entire land because under section 37 if the sale is declared valid then the landlord is bound to restore possession of the land to the tenants whose tenancy was terminated. In view of this legal position, the order of the Authorities below declaring the said transaction between the original landlord and the respondent as invalid, does not affect the rights of both the petitioner and the tenant since both of them contend that they would be entitled to half of the land, equally.

4. In the result, the petition is allowed. Rule made absolute. Impugned order is set aside and

Tahsildar is directed to divide the land equally and deliver possession of half of the land to each of the petitioner and the respondent No.1. Tahsildar to actually divide the land and put the parties in possession within one month of the filing of the certified copy. Petition disposed of. Certified copy expedited.

(D.G. DESHPANDE, J.)